



Washington State Liquor Control Board

POST OFFICE BOX 1129

Olympia, Washington 98501

January 14, 1971

Washington Beer & Wine Wholesalers Association, Inc., has petitioned the Washington State Liquor Control Board requesting the amendment of Rule (81) Wine Price Posting (Washington Administrative Code [WAC] 314-24-190) being a portion of Title IV. -- DOMESTIC WINERIES, WINE WHOLESALERS, WINE IMPORTERS, AND HOLDERS OF CERTIFICATE OF APPROVAL. A copy of its amended petition is attached.

The requested amendment makes substantial changes in the rule including requiring wine wholesalers rather than domestic wineries and holders of certificate of approval to file price postings, providing filing and effective dates for contracts and price postings, and requiring reduced prices to remain in effect for a period of not less than 180 days from the effective date of such postings.

The Liquor Control Board has decided to initiate rule-making proceedings in accordance with the Administrative Procedure Act. A copy of the notice which will be filed in the office of the code reviser is attached. A public hearing on the proposed rule will be held in the Board Room of the State Liquor Control Board, General Administrative Building, Olympia, Washington, at 9 a.m., Monday, February 8, 1971.

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PLAINTIFF'S EXHIBIT	
CASE NO.	CV04-0360P
EXHIBIT NO.	039

RECEIVED

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WASHINGTON STATE
LIQUOR CONTROL BOARD

BEFORE THE WASHINGTON STATE LIQUOR CONTROL BOARD

In the Matter of the Petition of)

WASHINGTON BEER & WINE
WHOLESALE ASSOCIATION,
INC.)

AMENDED PETITION

For Amendment of Rule (81)

Comes now Washington Beer & Wine Wholesales Association,
Inc., petitioner herein, and states:

I

Washington Beer & Wine Wholesalers Association, Inc., 1006
Securities Building, Seattle, Washington, 98101, hereby petitions the State
Liquor Control Board, seeking the amendment of Rule (81).

II

Petitioner seeks the amendment of the rule substantially as set
forth hereafter:

(81) Wine Price Posting

(1) Every ((domestic winery and every certificate of
approval holder)) wine wholesaler shall file with the board at
its office in Olympia a wine price posting, showing the delivered
wholesale prices at which any and all brands of wine offered
for sale by such ((domestic winery or certificate of approval
holder)) wine wholesaler shall be sold ((by wine wholesalers))
to retailers within the state. ((Each such schedule of wholesale
prices shall be uniform for all retailers within the state.))

(2) All ((price postings)) written contracts from domestic
wineries and certificate of approval holders must be received
by the board not later than the ((fifteenth)) twenty-fifth day of the
month, and if approved will become effective on the first day
of the second calendar month following the date of such filing.
An additional period will be allowed for revision of price
postings to correct errors and omissions, or to make normal
price changes, but a revised posting must be on file at the
board office by not later than the first day of the month in
order to become effective on the first day of the next calendar
month. All price postings from wine wholesalers must be
received by the board not later than the fifteenth day of the
month, and if approved will become effective on the first day

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of the calendar month following the date of such filing. An additional period, not to exceed five days, will be allowed for revision of a price posting, to correct errors, omissions, or to make normal price changes, but a revised posting must be on file at the board office by not later than the twentieth day of the month in order to become effective on the first day of the next calendar month.

(3) Filing Date Exception--Whenever the fifteenth day of any month falls on Saturday, Sunday or a legal holiday, an original price posting may be filed not later than the close of business the next business day.

(4) In the event that a ((domestic winery or certificate of approval holder)) wine wholesaler determines to make no changes in any items or prices listed in the last filed and approved schedule, such prices listed in the schedule previously filed and in effect, shall remain in effect for each succeeding calendar month until a revised or amended schedule is filed and approved, as provided herein. Whenever a wine wholesaler posts a reduced price on any package or packages, the reduced price shall remain in effect for a period of not less than 180 days from the effective date of such posting, except when said posting would result in a violation of Regulation (124)(4).

(5) Postings shall be submitted upon forms prescribed and furnished by the board, and shall set forth:

(a) All brands, types and sizes of packages or containers of wine offered for sale in this state by such domestic winery or certificate of approval holder, which packages or containers shall be limited to the sizes permitted in Regulation (66).

(b) The delivered wholesale prices thereof within the state, including allowances, if any, for returned empty packages or containers. Such posted prices shall not include the tax of 26 per cent of the wholesale selling price, levied under RCW 82.08.150(1), which must be collected by the wine wholesaler and remitted directly to the state department of revenue.

(c) No wine wholesaler shall sell or offer for sale any package or container of wine at a price differing from the price of such item as shown in the price posting then in effect.

(((d) Prices posted by a domestic winery or certificate of approval holder shall be consistent as between the various packages and containers offered for sale.))

(((e))) (d) No price postings involving temporary price reductions or quantity discounts shall be made. No price shall be posted which is below "cost", or below "cost of doing business," or a "loss leader" as those terms are defined in Regulation (124) (((e))) (4).

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((f)) (e) Wholesale prices on a "close out" item shall be accepted by the board only if the item to be discontinued has been listed on the state market for a period of at least six months, and upon the further condition that such item will not be imported for sale in this state for a period of one year following the approval of such "close out". The wholesale price on such an item shall be deemed acceptable only if it is in compliance with the provisions of Regulation (124) ((-e))) (4).

6. The board may reject any price posting or portion thereof which it deems to be in violation of this or any other regulation or which would tend to disrupt the orderly sale and distribution of wine. Whenever the board shall reject any posting the licensee submitting said posting may be heard by the board and shall have the burden of showing that the posting is not in violation of regulation and/or does not tend to disrupt the orderly sale and distribution of wine. Thereupon if said posting is accepted it shall become effective at a time fixed by the board. If said posting or portion thereof is rejected the last effective posting shall remain in effect, until such time as an amended posting is filed and approved in accordance with the provisions of this regulation.

All price postings filed as required by this regulation shall at all times after approval be open to inspection to all trade buyers within the state of Washington and shall not in any sense be considered confidential.

III

The Washington Beer & Wine Wholesalers Association, Inc., is composed of the beer and wine wholesalers throughout the state of Washington and is therefore interested in the proposed amendment on behalf of its members. The purpose of the proposed amendment is to enable the independently owned and operated wine wholesaler to establish, subject to board regulation, its own wholesale prices to retailer. Secondly, to provide a more orderly method for the filing of contracts and posting, and, lastly, to provide a 180 day "post-off" protection necessary to maintain an orderly market.

IV

Wholesalers of manufactured wine brands are requesting a right, which is presently enjoyed by other businesses in the state--in essence, the privilege to establish prices to retailer.

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V

A 180-day provision against "post-offs" will guard against any winery demanding its wholesalers to reduce the price on one or more packages for a brief period of time with the intent to score a quick sale on that item or items under the guise of a "special deal." "Post-offs" not only tend to disrupt an orderly market, but in many incidences are contrary to and in violation of the board's regulation.

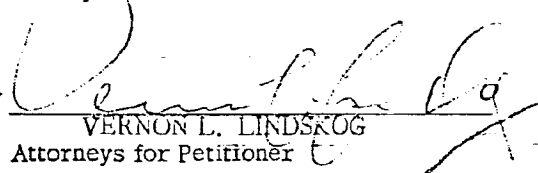
VI

A 15-day period between the time a supplier could file written contracts and when a wholesaler could file price schedules would allow the wholesaler time to adjust its selling prices, either up or down, contingent on whether the supplier's contract prices to it were increased or decreased from the previous filing. If the supplier's prices were increased to it, then it would have the opportunity to adjust its selling prices to compensate for its cost of doing business and to adjust to the present business climate.

WHEREFORE, petitioner respectfully requests the Washington State Liquor Control Board to amend Rule (81) of Rules and Regulations promulgated by said board, in accordance with the proposed amendments set forth in paragraph II herein.

PEBBLES, SWANSON & LINDSKOG

By


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Attorneys for Petitioner

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NOTICE OF INTENTION TO ADOPT, AMEND OR REPEAL RULES
(Additional information may be typed on back of page)

(1) Notice is hereby given in accordance with the provisions of RCW 34.04. (1967c237§3), RCW 42.32.010, and _____ ①, that at 9 a.m., Monday, February 8, 1971 in the _____ (time) (day) (date) _____ Liquor Control Board, Second Floor _____ General Administration Building, Olympia, Washington _____, the _____ (place) _____ Washington State Liquor Control Board _____, will, in a _____ (name of agency) meeting open to the public, adopt, amend or repeal rules concerning. ②

Rule 81 WINE PRICE POSTING, being a portion of TITLE IV.-- DOMESTIC WINERIES, WINE WHOLESALERS, WINE IMPORTERS, AND HOLDERS OF CERTIFICATE OF APPROVAL (WAC 314-20-190).

The terms or substance of the proposed amended rule are set forth on pp. 1 and 2 of Attachment A.

(2) The authority under which these rules are proposed is:

RCW 66.08.030, RCW 66.08.070, and Title 34 of RCW

(3) Interested persons may submit data, views or arguments to this agency --

(a) ☒ in writing to be received by this agency prior to February 8, 1971. (date)

and/or

(b) ☒ orally at 9 a.m., Monday, February 8, 1971 (time) (day) (date)

Office of the Liquor Control Board, Second Floor
General Administration Building, Olympia, Washington
(place)

(4) The additional notice required by 1967 c 237 § 3 has been made by mailing copies of this notice to all persons who have made timely request of this agency for advance notice of its rule-making proceedings, and giving public notice as provided in RCW 42.32.010.

(5) This notice is connected to and continues the matter noticed in Notice Nos. _____ filed with the reviser's office on _____ (dates) ④

Washington State Liquor Control Board
(AGENCY)

Dated: ③ January 14, 1971

By: _____

Chairman
(TITLE)

NOTICE#

(Do not write in this space)

- ① HERE CITE ADDITIONAL STATUTES (IF ANY) REQUIRING NOTICE BY THE RULE MAKING AGENCY.
- ② HERE INSERT A STATEMENT OF EITHER THE TERMS OR SUBSTANCE OF THE PROPOSED RULE OR A DESCRIPTION OF THE SUBJECTS AND ISSUES INVOLVED. THIS NOTICE WILL BE PHOTOGRAPHED AND PUBLISHED IN THE WASHINGTON ADMINISTRATIVE CODE: IF IT IS DESIRED ALSO TO FILE THE TEXT OF THE PROPOSED RULES THEY MAY IN ADDITION BE APPENDED HERETO.
- ③ THE STATUTE REQUIRES 20 DAYS NOTICE, SEE 1967 c 237 §§ 3 and 4.
- ④ USE FOR CONTINUANCE OF MATTER PREVIOUSLY NOTICED AND ENTER HERE NOTICE NOS. OF NOTICES PREVIOUSLY RETURNED TO YOU BY REVISER'S OFFICE.

(FORM CR-1)

Form Adopted 12/11/67, Effective 1/17/68

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ATTACHMENT A

AMENDED

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